

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

December 19, 2013

- I. **CALL TO ORDER** – The meeting was called to order at 1:27 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Eunice Beatty; Will Berkley; Carla Blanton; Mike Cravens; Karen Mundy; Mike Owens, Chair; Frank Penn; Carolyn Plumlee; and Bill Wilson. Absent were Patrick Brewer and David Drake.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Jimmy Emmons; Traci Wade; Tom Martin; and Stephanie Cunningham. Other staff members present were: Tracy Jones, Department of Law; Hillard Newman, Division of Engineering; Tim Queary, Urban Forester; and Casey Kaucher, Division of Traffic Engineering.

- II. **APPROVAL OF MINUTES** – There were no minutes to be approved.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **ANDERSON CAMPUS RENTAL PROPERTIES ZONING MAP AMENDMENT & LYNN GROVE ADDITION ZONING DEVELOPMENT PLAN**

- a. MAR 2013-20: ANDERSON CAMPUS RENTAL PROPERTIES (2/2/14)* - petition for a zone map amendment from a Single Family Residential (R-1D) zone to a High Density Apartment (R-4) zone, for 1.206 net (1.542 gross) acres, for properties located at 164-200 Simpson Avenue (even only); 1103-1111 Fern Avenue (odd only); and 1106 & 1108 Stillwell Avenue.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 4) recommends Medium Density Residential (MD) future land use for the 17 parcels that comprise the property. The applicant proposes redeveloping the subject property with two apartment buildings for a total of 39 dwelling units, with 51 bedrooms, and associated off-street parking.

The Zoning Committee did not make a recommendation on this request.

The Staff Recommended: **Approval**, for the following reason:

1. The requested High Density Apartment (R-4) zoning for the subject property is not in agreement with the 2007 Comprehensive Plan's recommendation for Medium Density Residential land use, defined as 5–10 dwelling units per net acre. However, two recent zone change requests (in 2012 and 2013) have been granted in the immediate area that have resulted in a major change of a physical and economic nature, altering the basic character of the area. These two zone changes were not anticipated by the 2007 Comprehensive Plan. The rezoning of nearby properties to the R-1T and R-4 zones has increased the permitted density of land use in this area over that recommended by the Plan.
 2. This recommendation is made subject to approval and certification of ZDP 2013-103: Lynn Grove Addition prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. ZDP 2013-103: LYNN GROVE ADDITION (2/2/14)* - located at 164-200 Simpson Avenue (even only), 1103 – 1111 Fern Avenue (odd only) and 1106 & 1108 Stillwell Avenue. **(Barrett Partners)**

The Subdivision Committee did not make a recommendation on this request.

The Technical Committee and Staff Committee Recommended: **Postponement**. There were concerns about the plan meeting the requirements for the requested R-4 zone.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Addition of metes and bounds description.
8. Denote construction access location.
9. Addition of tree inventory.
10. Denote building heights in feet.
11. Denote reciprocal parking and access.

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12. Relocate dumpsters closer to main building (on the same lot).
13. Denote adjoining zone information (R-1D).
14. Denote that compliance with Article 15-7(a) requirements shall be demonstrated at the time of the Final Development Plan.
15. Discuss need for storm drainage and detention.
16. Discuss improvements to street frontages.
17. Discuss need for sidewalks from building to Simpson Avenue right-of-way.
18. Discuss landscape buffer adjacent to single family lots.
19. Discuss 5' landscape buffer for Building #2 and possible variance.
20. Discuss proposed parking in the side yard and possible variance.
21. Discuss useable open space.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He requested a one-month postponement of this item, in order to allow the petitioner time to revise the associated zoning development plan.

Action: A motion was made by Mr. Cravens, seconded by Ms. Beatty, and carried 9-0 (Brewer and Drake absent) to postpone MAR 2013-20 to the January 30, 2014, Planning Commission meeting.

- IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, December 5, 2013, at 8:30 a.m. The meeting was attended by Commission members: Frank Penn, Carolyn Plumlee, Eunice Beatty and Karen Mundy. Committee members in attendance were: Hillard Newman, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Traci Wade, Dave Jarman, Kelly Hunter and Denise Bullock, as well as Lieutenant Greg Lengal, Division of Fire & Emergency Services and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.
2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.

- V. ZONING ITEMS** - The Zoning Committee met on Thursday, December 5, 2013, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Patrick Brewer, Mike Cravens, David Drake, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

~~The procedure for these hearings is as follows:~~

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
 - (d) Hearing closed and Commission votes on zone change petition and related plan(s)

B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS – Following abbreviated hearings, the remaining petitions will be considered.

~~The procedure for these hearings is as follows:~~

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. GREER LAND CO. – SMYRNA #2, LLC, ZONING MAP AMENDMENT & JAMES W. ATKINS, JR., PROPERTY ZONING DEVELOPMENT PLAN

- a. MAR 2012-12: GREER LAND CO. – SMYRNA #2, LLC (2/2/14)* - petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Neighborhood Business (B-1) zone, for 2.79 net (5.05 gross) acres, for property located at 3939 Tate Creek Road.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 10) recommends Medium Density Residential future land use for the subject property, defined as 5–10 dwelling units per net acre. The petitioner proposes a Neighborhood Business (B-1) zone to develop a branch bank and a coffee shop, both with a drive-through and associated off-street parking.

The Zoning Committee Recommended: **Referral to the full Commission.**

The Staff Recommends: **Disapproval**, for the following reasons:

1. The existing Agricultural-Urban (A-U) zoning for the subject property is appropriate for the subject property, given that 100% of the property is currently located within a Special Flood Hazard Area (either floodway or floodplain); and it is compatible with the existing residential zoning of the surrounding neighborhood, as well as the agricultural zoning of the utility sub-station to the west of the subject property. The proposed B-1 zone is inappropriate at this location because it will require significant physical alteration of the property through construction of a retaining wall, as well as re-grading the property by adding eight feet of fill in order to make it developable for commercial use that includes drive-through facilities.
 2. There have been no unanticipated changes in the immediate area of an economic, social or physical nature since the Comprehensive Plan was adopted in 2007.
 3. There is no compelling need for the commercial development proposed in this area, given that extensive development in environmentally sensitive areas is being proposed without approval by Local or State agencies, and that the Tate Creek Shopping Center exists immediately to the south and has numerous vacancies.
 4. The request to rezone property that is wholly in the FEMA Special Flood Hazard Area (100-year floodplain) is directly contrary to the recently adopted 2013 Comprehensive Plan Goals and Objectives, Theme B. Protecting the Environment. The subject property is an environmentally sensitive area, adjacent to an EPA-designated impaired stream, West Hickman Creek. Development and grading within the floodplain are not permitted by the Zoning Ordinance, unless there is a special circumstance, and none has been identified in this location.
- b. ZDP 2012-63: JAMES W. ATKINS, JR. PROPERTY (12/13/12)* - located at 3939 Tate Creek Road.
(Vision Engineering)

The Subdivision Committee Recommended: **Postponement**. There were some questions regarding the proposed access and circulation, the CLOMR-F (floodplain), tree protection and street improvements. In addition, the Zoning Ordinance may not permit the extent of fill proposed on this site, unless a special use permit or floodplain variance is approved.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
8. Discuss the need for improvements to Wilson-Downing Road.
9. Discuss internal circulation proposed.
10. Discuss proposed dumpster location.
11. Discuss CLOMR-F and timing of watershed study.

Zoning Presentation: Ms. Wade presented the staff's zoning report, noting that this application was originally filed last year, and was indefinitely postponed by the Commission in December, 2012. She oriented the Commission to the location of the subject property at the intersection of Tate Creek Road and Wilson Downing Road. The property comprises the northwest corner of that intersection, which is signalized. In the vicinity of the subject property are a Windstream facility, to the northwest, which is also zoned A-U; the Roman Soldier subdivision, to the north, which is

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in a Two Family Residential (R-2) zone; two apartment complexes across Bates Creek Road, which are zoned High Density Apartment (R-4); and the Bates Creek Shopping Center to the southwest, which is zoned Professional Office (P-1), nearest the subject property, and Planned Shopping Center (B-6P) further to the south.

Ms. Wade displayed an aerial photograph of the subject property, noting that it is completely naturalized, and covered with trees and shrubs. She said that the 2007 Comprehensive Plan recommends Medium Density Residential land use for the subject property, and a density of 5-10 dwelling units per net acre. Since the applicant is proposing a B-1 zone for the property, the staff cannot find their request to be in agreement with the recommendation of the Comprehensive Plan. The staff is also not aware of any changes of an economic, physical, or social nature in the immediate vicinity of the property since the Comprehensive Plan was adopted in 2007. Ms. Wade said that, given those circumstances, the Planning Commission must consider the appropriateness of the requested B-1 zone.

Ms. Wade displayed the following photographs of the subject property: 1) a view from the corner of Bates Creek and Wilson Downing Roads, noting that the site is heavily treed; 2) a view to the north, along Bates Creek Road, noting the significant grade change from the roadway to the subject property; 3) a view down Wilson Downing Road, which also has a significant grade change to the property; and 4) a view of West Hickman Creek, which crosses the subject property.

Ms. Wade stated that the petitioner is proposing to construct a retaining wall on the subject property, immediately adjacent to the designated floodway. She explained that the floodway is the portion of the property that would be expected to have moving water during a flood event. The wall is proposed to be constructed within the floodplain, in order to create a buildable site by filling behind the wall. The petitioner is proposing to construct a branch bank and coffee shop on the site, each with a drive-through facility. Access to the property is proposed to be located on Wilson Downing Road, across from the existing access to Bates Creek Shopping Center. An emergency access is proposed on Wilson Downing Road closer to the intersection with Bates Creek Road. The emergency access is proposed due to the location of the primary access point in the floodplain.

Ms. Wade said that the staff has multiple concerns about the appropriateness of this rezoning application. Of primary concern is the location of the whole property within the current, regulatory floodplain. The applicant is proposing to modify the floodplain in order to create an "island" of developable area, with both proposed access points (permanent and emergency) remaining in the floodplain. Ms. Wade stated that the staff is also concerned that the proposed development does not recognize the FEMA best management practices for floodplains and stormwater management; it would not protect the existing green infrastructure; and it could result in environmental degradation in the vicinity of the subject property.

Ms. Wade said that the subject property is designated as part of a Special Flood Hazard Area, or 100-year floodplain, according to the FEMA digital maps that were approved in 2008. West Hickman Creek, a portion of which is located on the subject property, is considered an "impaired stream" by the United States Environmental Protection Agency (EPA). A Conditional Letter of Map Revision (CLOMR), based on fill, has been obtained from FEMA, indicating that the applicant's engineer has used hydrologic modeling to prove that a portion of the property can be removed from the floodplain, using fill on the site, without increasing the base flood elevation. With the issuance of the CLOMR, FEMA has indicated that there will be no adverse impact to the property; however, the staff contends that that assessment does not take into account the social and economic benefits that the floodplain provides to the community. Ms. Wade stated that the staff would also like to note that floodplains change over time. The 1992 FEMA maps depicted a portion of the subject property as being located outside of the floodplain, but the 2008 maps indicate that the property is located wholly within the floodplain. The property located directly across Wilson Downing Road was developed with the thought that channelizing the stream would result in the office building on the property being located outside of the floodplain; however, the building does remain within the regulatory floodplain on the 2008 maps. Ms. Wade added that, although there is a science used in the engineering that the applicant is proposing on the site, the staff contends that it is based on assumptions about what water will do in any given flood situation.

With regard to best management practices for floodplains, Ms. Wade said that the primary goal is to reduce flood risks in terms of costs and personal safety. In order to do so, the preferred practice is to maintain the existing riparian, vegetative area around the creek, free of development; and to create a sustainable green infrastructure around the creeks in the community. FEMA recommends, as a land use best management practice, to have no use within the floodway; only agricultural and recreational uses within the floodplain; residential, commercial, and utility uses in the 500-year floodplain or beyond; and critical uses located on high ground, away from any potential for flooding. Ms. Wade noted that protection of floodplains is recognized nationally as an important element of land use planning by the National League of Cities; the American Planning Association; and the EPA, as well as other organizations. With regard to green infrastructure, she explained that, since the subject property is located wholly within the floodplain, it can be considered to be part of the community's existing green infrastructure. The primary principle of green infrastructure planning is to remove a portion of the typical "gray" stormwater management system (i.e., pipes) and allow vegetative and soil areas to soak up rainwater, providing flood mitigation and air quality management opportunities as well. In addition to created natural areas such as rain gardens and green rooftops, preserving undeveloped for-

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ests, floodplains, and wetlands helps to maintain the quality of floodplain areas. Green infrastructure investments boost the economy; enhance the community's health and safety; and provide recreational, wildlife, and other benefits.

Ms. Wade stated that the 2007 and 2013 Comprehensive Plans identify Goals and Objectives that are related to green infrastructure and providing for the protection of natural resources. The Comprehensive Plans specifically mention protecting natural drainage ways and creeks from severe intrusion, alteration, and destruction during urban development. Goal 4 of the 2007 Comprehensive Plan has several Objectives related to greenspace and managing environmentally sensitive areas for the benefit of the community. The 2013 Comprehensive Plan has a Theme and specific Goal related to the green infrastructure program. Objective (a) specifically states that natural areas should be protected prior to development; the staff believes that, as a natural area within the floodplain, the subject property should be protected.

Ms. Wade stated that the subject property is different from other properties considered by the Planning Commission for development in that the proposed development would only be possible with extensive grading and filling within the floodplain, which is specifically prohibited by Article 19 of the Zoning Ordinance, unless a Special Use Permit is issued or a variance is granted. At this time, the petitioner has not received a Special Use Permit, and additional state and federal requirements would need to be met prior to development on the property. Ms. Wade added that, although FEMA had issued a CLOMR for the site, their letter did not grant the petitioner permission under local regulations to develop the property as proposed. She said that, since the subject property is wholly located within the floodplain, the proposed development is also directly contrary to the Zoning Ordinance, and is inconsistent with the recommendations of the Comprehensive Plan.

Ms. Wade said that the extent of fill proposed for the subject property would require over 300 dump trucks of soil. The staff believes that that much fill is not appropriate for the subject site, and is a bad idea for the community as a whole. The staff contends that the existing A-U zone remains appropriate for the subject property, and the proposed B-1 zone is inappropriate. There is no compelling need for the B-1 zoning in the vicinity, since the Bates Creek Shopping Center exists immediately to the south to serve the area.

Ms. Wade stated that the petitioner indicated at the Zoning Committee meeting that they viewed the proposed development as an opportunity to provide a branch bank and coffee shop to the residents of the area. The staff would urge the Planning Commission to consider the opportunity to protect the community's green infrastructure; respect the floodplain; prioritize water quality; and to prevent costly future claims at this location. Ms. Wade concluded by noting that, in 2001, LFUCG changed the regulations and made a commitment to floodplain management; the staff believes that approving this proposed zone change would equate to a move backward toward the costly mistakes of the past. She said that the staff is recommending disapproval of this request, for the reasons as listed in the staff report and on the agenda.

Commission Questions: Mr. Wilson asked if a property could be located in a floodplain for one period of time, then out of the floodplain at some point. Ms. Wade answered that floodplains change based on new modeling or study information. She said that, in 1992, the regulatory floodplain map for the subject property depicted a small corner at the front of the property that was out of the floodplain. In 2008, when new digital floodplain maps were adopted, one-foot contours were used, and it was determined that the property was completely within the floodplain. Mr. Wilson asked if those changes occurred naturally. Ms. Wade responded that those changes are typically based on new, better topographic information, or due to documented alterations within the watershed.

Ms. Blanton asked, with regard to the Comprehensive Plan recommendation of Medium Density Residential use for the subject property, if it would really be more appropriate to develop the property for residential use. She said that it seemed that concerns about traffic and access to the property would be mitigated somewhat by locating commercial uses there, rather than residential uses. Ms. Wade answered that there are ways to floodproof buildings by raising them, which is much more common with residential structures than commercial structures. She said that, typically, such residences are constructed on piers or basements, which provide a way for water to circulate under the livable space. She added that, although there are existing buildings on piers in the community, it would be difficult to construct a business with a drive-through in such a fashion. Ms. Wade reiterated that one of the staff's primary concerns is the construction of the entire proposed development on fill, rather than just a portion of it.

Ms. Mundy asked how the residences on the other side of the creek would be affected, if a retaining wall is constructed on one side of the creek on the subject property. Ms. Wade answered that the staff shares that concern, and that the petitioner's engineer would have to address the question, using data from their modeling of the property.

Mr. Owens asked Ms. Wade to provide additional history on the office building constructed in the floodplain across the street from the subject property. Ms. Wade responded that, when the building was planned and built in the late 1980s and early 1990s, floodplain regulations were not as strict. The building was constructed at the top of the bank, and remains in the floodplain and at risk of flooding.

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Ms. Beatty asked what percent of Tates Creek Shopping Center is located in the floodplain. Ms. Wade answered that the shopping center itself is not located in the floodplain; but the office building and some adjacent parking areas are located in the floodplain. She noted that the location of a park directly behind the commercial area allows the water to spread out, which mitigates the flood risk. Ms. Beatty asked Ms. Wade to reiterate the staff's concern about the amount of fill material proposed for the subject property. Ms. Wade stated that the general concern is the stability of the fill behind the proposed retaining wall during rain events, when the wall is pressured by rainwater in the unbalanced fill. She said that, when those situations are engineered correctly, they can be buildable. However, the subject property currently absorbs a lot of stormwater, and the staff is concerned about where that amount of water will go when the property is covered with new impervious surfaces.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, further orienting the Commission to the location of the subject property. He said that the petitioner is proposing to provide access to the property on Wilson Downing Road directly across from the existing access to Tates Creek Shopping Center, with an emergency access located closer to the Wilson Downing/Tates Creek Road intersection. The petitioner is proposing to construct two buildings on the property: a branch bank, which is proposed to be just over 3,000 square feet in size; and a coffee shop, at just over 1,700 square feet in size. The petitioner is also proposing a total of 70 parking spaces for both uses, with a retaining wall along the floodway of West Hickman Creek. Referring to a rendered copy of the development plan, Mr. Martin noted the location of the proposed wall; the floodway; and the post-development floodplain that would result from the placement of fill material on the site. The emergency access, which is a requirement of the Special Permit process outlined in Article 19 of the Zoning Ordinance, would be constructed so as to discourage use except in the event of a flood emergency that isolates the property.

Mr. Martin stated that staff had several concerns about the proposed development plan, one of which was improvements to Wilson Downing Road. He said that condition #8 could be deleted, since the petitioner has agreed to provide standard improvements, including a turn lane into the site and sidewalks along Wilson Downing and Tates Creek Roads. There was also concern about internal vehicular circulation on the property, which the petitioner has addressed to a certain extent with the submission of this revised version of the development plan. Mr. Martin said that the staff understood that the Division of Fire and Emergency Services still had some concerns about their ability to maneuver their vehicles on the site. In addition, there were some concerns about the proposed location of the dumpster on the property, since that portion of the property could be particularly prone to flooding during rain events. The relocation of the dumpster could impact the revision of the internal circulation pattern, so the staff is still concerned that all of those issues need to be more fully addressed. Mr. Martin stated that the staff's major concern was the CLOMR, which was issued by FEMA for the site, in light of the fact that Wilson Downing Road has been known to flood during 100-year storm events. He noted that, when the homes in the Roman Soldier subdivision adjoining the subject property were constructed, they were located out of the floodplain. Since that time, the floodplain maps have been revised, and one of those structures is now located almost wholly within the floodplain, while another is partially so.

Mr. Martin explained, with regard to the CLOMR, that it is the first step of many in the Special Permit process that the petitioner will be required to complete in order to develop the subject property. He said that there are existing CLOMRs and buildings constructed on fill in the community, but those areas are only partially filled. The staff is concerned about the construction of the entire development on fill. The staff is also concerned about tree protection, since there is an existing bur oak tree on the site (although it is small and somewhat unhealthy), as well as the existing riparian areas along the creek.

Mr. Martin stated, with regard to condition #11, that a watershed study is currently underway in the vicinity of the subject property, and it is being performed by the petitioner's engineer. He explained that FEMA has funded many such studies across the country, two of which have been performed in Fayette County. The West Hickman Creek Watershed is the second of those studies, and the staff is concerned about how the proposed work on the subject property could be incorporated into the overall study.

Commission Question: Mr. Owens asked if the CLOMR had been filed and approved. Mr. Martin answered that it had been accepted by FEMA as a conditional letter, which was also signed off by the Division of Engineering. Mr. Owens asked if increased stormwater from the proposed development could exacerbate the existing flooding on Wilson Downing Road. Mr. Martin answered that there is typically increased runoff from a developed site, but the calculation used in obtaining the CLOMR addressed that issue, resulting in a declaration that there would be no net impact from it.

Petitioner Presentation: Bruce Simpson, attorney, was present representing the petitioner. He stated that he believes that the staff has essentially declared the subject property to be undevelopable, with the exception of a residential structure on piers, although it has been recommended for residential land use since it was added to the Urban Service Area in 1980. The property owners took that land use recommendation to mean that the property was suitable for development, provided that the site could be properly engineered in order to receive a Special Use Permit.

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Mr. Simpson said that this rezoning request was postponed for a year because, when it was first filed, the staff and Technical Committee shared all of their concerns about the property and the floodplain. He noted that the petitioner then chose to begin the CLOMR process in order to develop the property, despite the fact that many other properties in the community have been developed that required changes to the floodplain to a much greater extent than what is proposed with this request.

Mr. Simpson explained that the CLOMR process is heavily scrutinized, particularly since the imposition of the EPA Consent Decree. He said that the first step in the process was a review of the proposed modeling by the Division of Engineering. After a three- to four-month review, the Division of Engineering declared that the proposal was acceptable. Following that review, the application was submitted to FEMA, which issued the CLOMR in October of 2013. If this rezoning request is approved by the Urban County Council, the petitioner will then be able to begin the Special Use Permit process, which is also an exhaustive process that could take several months. Mr. Simpson said that the petitioner recently participated in a conference call with Greg Lubeck of the Division of Engineering, to determine if there would be any issues with the Special Use Permit, once the property is rezoned. He stated that Mr. Lubeck indicated during that conversation that he did not believe there would be any concerns about their pursuit of a Special Use Permit for the property.

Mr. Simpson stated that the petitioner has developed several other high-quality projects near the subject property, including the new Bank of Lexington building, a portion of which was built on 14 feet of fill. He said that, in the past, there was more property available for development within the Urban Service Area (USA), so difficult parcels such as the subject property remained undeveloped. However, since the community made a decision not to expand the USA, there will be more developments proposed to be constructed on fill, as the more "difficult" properties are developed. Mr. Simpson said that the development costs of such properties are so high that it would be nearly impossible to create a marketable residential development. He estimated that, if the petitioner chose to develop an apartment building on the subject property, rents would need to be at least twice as high as they are in the immediate vicinity, in order to justify the necessary development costs.

Mr. Simpson displayed the following images: 1) an aerial view of the property; 2) an aerial view of the property, with an overlay of the existing regulatory floodplain; 3) an aerial view of the property, noting how the floodplain would change should the CLOMR be accepted by FEMA; 4) a rendering of the property, noting that only 40% of it is proposed to be developed; 5) an aerial view, noting that the closest residence to the property is approximately 200 yards away; 6) Bates Creek Shopping Center, which was constructed on as much as 21 feet of fill; and 7) the Bank of Lexington building, which was constructed on 14 feet of fill.

Mr. Simpson stated that he had learned, while chairing the Floodplain Management Task Force, that floodplains are designated, not through review by federal employees, but as a result of engineering studies performed by local engineers. One such study currently underway in Lexington-Fayette County is being performed by Jihad Hallany, of Vision Engineering, who is also the petitioner's engineer. Mr. Simpson said that Mr. Hallany is considered "the man people go to at the federal, state, and local level, for guidance in appropriately developing in and around floodplains."

Referring to the exhibit booklet he distributed to the Commission members prior to the start of this hearing, Mr. Simpson said that, when considering a rezoning request, the Commission must determine whether the requested zone is in agreement with the Comprehensive Plan; whether the existing zone is inappropriate and the requested zone is more appropriate; or whether there have been changes of a physical, social, or economic nature in the vicinity of the subject property since the most recent Comprehensive Plan. The petitioner in this case contends that the existing A-U zoning is inappropriate for the subject property, which is in a heavily developed urban area. The petitioner estimates that it will cost over \$750,000 just to engineer the floodplain on the property; development of the property as an agricultural use or fruit stand would therefore not be economically feasible. Mr. Simpson stated that the 2013 Comprehensive Plan encourages creative solutions to development issues, which means considering new engineering standards for difficult parcels such as the subject property. He said that, in addition to the CLOMR and Special Use Permit, FEMA would review the property after the floodplain was engineered, to ensure that the work was properly completed and that the public would be protected. He noted that, if FEMA does not give their approval, no construction can take place on the property. The petitioner has already completed a 34-page application process to receive the CLOMR, and completed an application to the U.S. Department of the Interior, indicating that plant and aquatic life in West Hickman Creek will not be negatively impacted by the proposed construction of the subject property. The exhibit booklet contains evidence indicating that the staff of the Division of Fire and Emergency Services is agreeable to the proposed development, including the proposed emergency access and interior circulation pattern. Mr. Simpson said that his exhibit also contains findings of fact for approval for this rezoning request.

Mr. Simpson stated that the petitioner contends that the subject property is not suitable for residential use, due to the amount of money necessary to provide the necessary basic infrastructure. He said that, unless "the government wants to write a check to the owner for the fair-market value of the property," the property should be considered suitable for development. The petitioner contends that the proposed development will complement the uses in the nearby Bates Creek Shopping Center, and it will be more suitable for the subject property than a residential use. Mr.

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Simpson stated that the petitioner has spent a great deal more money for engineering studies than a developer would typically be willing to commit at this stage, since the property has not yet been rezoned, because they believe that the proposed development will be a benefit to the community.

Commission Questions: Mr. Wilson asked if the petitioner had received final approval from FEMA. Mr. Simpson answered that the petitioner cannot get final approval until the fill has actually been installed on the property, and the final construction documents are submitted to FEMA. Mr. Wilson asked if the petitioner had gotten all of the other necessary sign-offs on the proposed development. Mr. Simpson responded that the petitioner had obtained all of the approvals that they could get at this point in the process. He added that the petitioner cannot seek the Special Use Permit until the zoning is in place.

Mr. Penn asked if the development plan would be likely to change once the property is rezoned to B-1. Mr. Simpson answered that the petitioner wants to develop the property with a bank and a coffee shop. Mr. Penn stated that he was concerned that the Planning Commission could grant the zone change, and then the petitioner could completely change their development plan. Mr. Simpson responded that, if that was the case, the Commission would have the opportunity to address those changes during their review of the final development plan for the property. He added that the petitioner has a track record of doing "the right thing."

Ms. Beatty asked if the petitioner's engineer could address the issue of whether or not eight feet of fill could be considered excessive. Mr. Simpson responded that the Carmax dealership, at the corner of Richmond Road and Man O' War Boulevard, was constructed on 30 – 40 feet of fill. Jihad Hallany, Vision Engineering, stated that he was confident that the retaining wall and eight feet of fill would be adequate for the proposed development, and that there would be no adverse impacts on surrounding areas. He said that the Bank of Lexington building, which was constructed on 14 feet of fill, is three stories tall. The retaining wall for that building is backed by a three-story underground detention basin; Mr. Hallany said that underground detention would not be necessary near the retaining wall on the subject property, and he was confident that the site engineering would work.

Mr. Owens asked why the petitioner was proposing to create an island, rather than fill the entire property. Mr. Hallany answered that this configuration was proposed because the petitioner's property line goes right up to the right-of-way, much of which would remain in the floodplain, and that the access point required a certain location on the property.

Mr. Owens asked how the emergency access would work on the property, and whether or not it would be blocked off. Mr. Simpson answered that the emergency access was proposed as a result of a discussion at the Subdivision Committee meeting. He said that the Division of Fire and Emergency Services indicated that an emergency access was necessary to allow them to access the property in the event of a 100-year flood event that might block the primary access point, but that access was not proposed to be blocked. Mr. Simpson added that the Division of Traffic Engineering was agreeable to the proposed access configuration. Mr. Owens said that it appeared that, if the emergency access point was not blocked, it would function as a regular, full access. Mr. Simpson answered that the emergency access was not proposed to be open; it would be kept gated, except during flood events.

Citizen Comment: There were no citizens present to comment on this request.

Staff Rebuttal: Ms. Wade stated that the staff remains concerned about the precedent that could be set by filling and constructing in the floodplain to the extent proposed. She said that the property is 2.79 acres in size, with 60% of the property being undevelopable due to its location in the floodway. The staff contends that the petitioner is being disingenuous in stating that they intend to protect 60% of the property, when there is currently no way that that area could be utilized for any type of development.

Ms. Wade said that the staff believes that a bank and coffee shop could be located within existing business zoning in the vicinity of the subject property, and that the B-1 zone is not necessary on the subject property. She added that a vacant land inventory was done as part of the 2013 Comprehensive Plan. In that inventory, the subject property was not identified as vacant and available for development, due to its environmental constraints. Ms. Wade noted that the staff would not agree with the petitioner's assertion that the Divisions of Engineering and Traffic Engineering are wholly in support of the proposed development.

Commission Question: Mr. Owens asked if the Comprehensive Plan's recommendation of residential land use on the subject property was due to its proximity to other residential uses. Ms. Wade answered that, when the subject property was designated for residential land use, it was part of the Atkins family farm. There was a residence located on the subject parcel, and the rest of the farm was proposed for development in 1986. Ms. Wade stated that there are often pieces of larger tracts that are not developable, but those parcels are not typically "saved" for development at a later date.

Mr. Berkley asked how the proposed development compares to the construction of the Southland Christian Church property on Richmond Road, particularly since the former Perkins restaurant site on that property is currently being

filled. Ms. Wade answered that the Perkins site is currently identified as a "holding" location on the development plan for the property, and that the current grade is likely not final. Mr. Berkley asked if the outlot parcels were completely constructed on fill. Ms. Wade responded that there were two outlots proposed on the property, for which the developers also sought and received a CLOMR-F from FEMA for fill. She stated that the staff was not in support of that development proposal. To date, there has been no construction on those outlots, and no permits have been pulled.

With regard to the CLOMR, Mr. Berkley asked if the Planning Commission has ever decided against FEMA's assessment that a development would produce minimal impact. He said that he was particularly struggling with the appropriateness of this request, since FEMA indicated that the proposed development would have no impact on the floodplain. Ms. Wade answered that "no impact" indicates that the floodplain can change by up to one inch. Mr. Hallany stated that any change under one inch is considered to have no impact.

Petitioner Rebuttal: Mr. Simpson stated that Mr. Hallany's expertise stands on its own. With regard to Ms. Wade's comment that the Divisions of Engineering and Traffic Engineering still had concerns about the proposed development, he said that they did not indicate such when they approved the petitioner's request for a CLOMR. He added that the petitioner has received no indication that the Division of Engineering would refuse to grant the petitioner's request for a Special Use Permit.

Mr. Simpson stated that, although the subject property might have been part of a larger farm at some point, it was not in 2001, 2007, or 2013, when it was recommended for residential use by three successive Comprehensive Plans. He said that the petitioner believes that the existing zoning is inappropriate, and he requested that the Planning Commission approve this request.

Commission Comments: Ms. Plumlee stated that she found it difficult to support a rezoning request wherein the proposed dumpster location is questioned "because the dumpster might float away." She said that she would support the staff's recommendation of disapproval on this request, because she agreed with their assessment that approving it would be a move backward for the community in terms of floodplain management.

Mr. Penn said that he would welcome more discussion among the Commission members, as he was having difficulty reaching a conclusion on this request.

Mr. Cravens stated that he believed that the petitioner could develop the subject property according to the development plan, since there was not enough room on the site to change things much. He said that houses are often constructed on fill, which is just part of typical construction work. Mr. Cravens opined that the Planning Commission would likely see more such projects, as most of the "easy" land within the USA has already been developed. He said that the petitioner will still have to obtain a Special Use Permit and submit a final development plan for the property.

Ms. Blanton said that she has struggled with this request since it was presented at the Zoning Committee meeting. She stated that she respects the staff's work and believes that the Commission should rely on their judgment; but she does not think the Commission is in the position to disapprove this request, since the petitioner has met every condition that has been set before them by LFUCG, FEMA, and the U.S. Department of Fish and Wildlife.

Ms. Beatty opined that the land within the USA is at a premium, and that the Commission will need to be creative and flexible in order to allow that land to be developed. She said that the standards are in place to hold all parties accountable to do the right thing, and she believes that that is the petitioner's intent. Ms. Beatty stated that she was leaning heavily toward approving this request, because she believes that the Commission must provide developers with a means for developing the vacant land that remains in the USA.

Mr. Penn stated that he would like for Mr. Newman to go on the record and indicate that he has reviewed this plan, and believes that the proposed development will have no impact on the floodplain. Mr. Newman stated that the Division of Engineering went through an extensive review of the modeling provided by Mr. Hallany. The modeling indicated minimal impact to the 100-year flood profile as a result of the placement of fill on the property. Mr. Newman noted that there is a distinction between the floodplain and the floodway; the floodway is considered to be reserved for the continued passage of floodwater discharge from 100-year storms. He said that the proposed development had to meet the criteria that, if the subject property was filled up to the floodway on both sides of the creek, it must result in a rise no greater than one foot. Mr. Penn asked if it would be fair to say that the major impact of the proposed development would be that the flooding on Wilson Downing Road would be a foot higher. Mr. Newman answered that the flood fringe would need to be filled along the entire length of the stream for that to happen, whereas the subject property is just a small component of the overall floodplain in this area.

Mr. Wilson stated that he was conflicted; on the one hand, this property was never counted as part of the Comprehensive Plan's vacant land survey. He said that he was "convinced that the developers have done everything right, but not convinced that they have done the right thing." Mr. Wilson stated that, when he experiences such conflicts, he is inclined to support the recommendations of the staff.

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Mr. Berkley stated that FEMA has signed off on the proposed development, and he could not envision another possible use for the property, given the costs of developing it. He said that he would vote for approval of this request.

Mr. Penn stated that he agreed with Mr. Wilson's comments. He said that, if the Planning Commission approves this request, they will do so under the assumption that all of the land in Fayette County is developable, given enough engineering. Mr. Penn said that he supports progressive, aggressive infill, but he is concerned about the precedent that could be set by approving the proposed development.

Ms. Mundy stated that she grew up in West Virginia, where "there are a lot of engineering wonders in the mountains." She said that the Commission has been put in a position where they are required to support infill, and she believes the petitioner is trying to do the right thing. Ms. Mundy stated that she is always concerned when a floodplain is disturbed, but it appears that the petitioner has done their homework, and the Commission will be watching the development plan to ensure that they continue to do the right thing.

Mr. Owens stated that he views the subject property as a remnant parcel, with two possible uses: the existing use, or commercial uses. He said that, if the property is developed for commercial use, it must be done right. Mr. Owens opined that the petitioner is making every effort to do so, and that the property can be developed.

Motion: A motion was made by Ms. Plumlee and seconded by Mr. Wilson to disapprove MAR 2012-12, for the reasons provided by staff. The motion failed, 3-6 (Brewer and Drake absent; Beatty, Berkley, Blanton, Cravens, Mundy and Owens opposed.)

Zoning Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 6-3 (Brewer and Drake absent; Penn, Plumlee, and Wilson opposed) to approve MAR 2012-12, for the following reasons:

1. The existing A-U zoning is inappropriate, and the proposed B-1 zoning is more appropriate, because the cost of multifamily development at this location is prohibitive, and maintaining the agricultural use at this location in an urbanized area is impractical. The proposed B-1 zoning is more practical.
2. A CLOMR-F has been obtained by the applicant, and there will be no adverse impact on aquatic life or surrounding neighborhood, and a Special Use Permit will have to be obtained from the Urban County Government.
3. The proposed development is compatible with existing business uses across Wilson Downing Road.

Development Plan Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 9-0 (Brewer and Drake absent; Penn abstained) to approve ZDP 2012-63, with the 11 conditions as listed on the agenda, changing the word "discuss" on conditions #8, 9, 10, and 11 to "resolve."

2. RK HOLDINGS, LLC, ZONING MAP AMENDMENT & WOODWARD COURT SUBDIVISION PRELIMINARY SUBDIVISION PLAN

- a. MAR 2013-18: RK HOLDINGS, LLC (2/2/14)* - petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Planned Neighborhood Residential (R-3) zone, for 9.77 net (10.29 gross) acres; and from a Single Family Residential (R-1B) zone to a Planned Neighborhood Residential (R-3) zone, for 0.0 net (0.26 gross) acre, for property located at 690 Woodward Lane.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 8) recommends a mixture of Low Density (LD) and Medium Density (MD) Residential future land use for the property. The petitioner proposes developing 48 single-family residential units on the subject property, at an average density of 4.9 dwelling units per acre.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reason:

1. The requested Planned Neighborhood Residential (R-3) zone is in agreement with the 2007 Comprehensive Plan for the following reasons:
 - a. The Land Use Element of the Plan recommends Medium Density Residential (MD) future land use, defined as 5-10 dwelling units per net acre, for 6.84 acres of the subject property closest to Woodward Lane (front); and Low Density Residential (LD) future land use, defined as 0-5 dwelling units per net acre, for 2.93 acres of the subject property closest to the adjacent railroad (rear).
 - b. The Plan suggests a density range of between 34 and 83 dwelling units, in total, for the subject property.
 - c. The petitioner proposes to construct 48 single-family dwelling units on the site, with a residential density of 4.9 dwelling units per net acre, in agreement with the Plan's recommendation.
2. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restriction is appropriate for the property via conditional zoning:
 - a. The property is to be developed with no more than 83 single-family residential units.

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This use restriction is necessary and appropriate in order to maintain a character consistent with surrounding residential properties and the 2007 Comprehensive Plan Land Use Element.

- b. PLAN 2013-129P: WOODWARD COURT SUBDIVISION (2/2/14)* - located at 690 Woodward Lane.
(Council District 6) **(Vision Engineering)**

The Subdivision Committee Recommended: **Postponement.** There were some questions regarding the access, the street pattern proposed, and potential easement conflicts.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree protection area(s) and required street tree information.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Denote acreage in proposed right-of-way.
10. Denote construction access.
11. Clearly delineate all easements.
12. Delete development plan notes from general notes.
13. Revise right-of-way connection to Wilderness Road right-of-way.
14. Discuss easement conflict with proposed right-of-way, detention and lots.
15. Discuss buildable area for Lots 19, 22 and 43.
16. Discuss access and possible connections to Woodward Lane and Wilderness Road.
17. Discuss gas transmission note on final record plat for adjacent property.
18. Discuss landscape buffer requirements per final record plat on adjacent property.

Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property at the terminus of Woodward Lane. She said that Woodward Lane is a rural roadway located to the west of Liberty Road, outside of New Circle Road. The subject property is approximately 9.75 acres in size. It wraps around three parcels that are zoned A-U and currently have single family residential uses. The parcel that is requested for rezoning from R-1B to R-3 is located wholly in the right-of-way, so that the portion of this request that is zoned A-U is the only developable acreage. Ms. Wade said that the property is bordered by mostly residential zoning and uses, with the exception of the warehouse uses along Palumbo Drive, which are located to the rear of the property. The Wilderness Road area is located to the northeast of the property, and the Danby Corners subdivision is located to the southeast. There are individual lots along Liberty Road in the vicinity of the property that remain in the A-U zone. All of the other properties with frontage along Woodward Lane are zoned R-1B.

Ms. Wade stated that the petitioner is proposing to rezone the property in order to develop 47 single family residential units. Access for 30 of those units is proposed to be located off Checkerberry Drive, to the southeast; the remaining 17 units are proposed to have access to Woodward Lane. All of the lots are proposed to be able to access Liberty Road. The subject property is currently mostly vacant, but it has existing Columbia Gas and cellular tower uses, which are proposed to remain. The subject property is also encumbered by numerous easements.

Ms. Wade displayed the following photographs of the subject property and surrounding area: 1) the intersection of the subject property and Woodward Lane, at the property's closest point to Liberty Road, noting the location of an area proposed for detention; 2) the adjacent property; 3) the terminus of Woodward Lane, next to the three existing A-U lots, which is currently fenced; 4) a view of the subject property from Checkerberry Drive, to the southeast corner, noting that it appeared that the petitioner had done some grading of the property; 5) a view from Checkerberry Drive toward Wilderness Road.

Ms. Wade stated that the 2007 Comprehensive Plan recommends a mixture of residential land uses for the subject property. Closest to the railroad tracks at the rear of the property, 2.93 acres are recommended for Low Density Residential use; the remaining 2/3 of the property is recommended for Medium Density Residential land use. The average of those two recommendations is 8.5 units per acre. Ms. Wade said that the petitioner is proposing a density of 4.81 units per net acre, after reducing the number of units proposed by one since the Zoning Committee meeting two weeks ago. She stated that the staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

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Ms. Wade explained that the staff believes that, although the petitioner is proposing a density and development pattern similar to the adjoining neighborhood, conditional zoning restrictions are appropriate at this location, because the requested R-3 zone permits multi-family residential units and other building types that could be out of character with the surrounding area. The staff is suggesting a conditional zoning restriction that would limit the subject property to no more than 83 single family residential units, since that number would result in the maximum density recommended by the Comprehensive Plan. Ms. Wade stated that the Zoning Committee also recommended approval of this request, for the reasons provided by staff.

Commission Question: Mr. Penn asked, with regard to condition #9 as listed on the agenda, when the fence would need to be installed. Ms. Wade answered that Mr. Martin would address that question during his presentation.

Mr. Sallee stated that the staff had received one communication on this request, which he distributed to the Commission members for their review.

Plan Presentation: Mr. Martin presented the preliminary subdivision plan, explaining that preliminary development plans are typically submitted in conjunction with rezoning requests. However, preliminary subdivision plans can be submitted instead, in cases of proposed single family residential developments, such as the petitioner is proposing.

Mr. Martin stated that the petitioner is proposing access to the subject property via Woodward Lane, with a stub street into an adjoining vacant parcel. He noted the location of the large Columbia Gas transmission site on the property, which exists in a joint easement between the local and national gas companies. The transmission easement has a required 15-foot buffer area. The petitioner is also proposing to construct a detention basin near the Woodward Lane side of the property.

With regard to Mr. Penn's earlier question, Mr. Martin said that Woodward Lane is an old rural road, and there was considerable concern at the Subdivision Committee meeting about its ability to handle the increased traffic that would be generated by the proposed development. He explained that Checkerberry Drive is part of a subdivision that has only one access point to Liberty Road, which caused a great deal of concern for the staff of the Division of Fire and Emergency Services. To address those concerns, the staff discussed an additional potential connection through the site, but it was decided that that option would cause more problems. Mr. Martin stated that, as part of an effort to address those concerns, the petitioner has agreed to construct two gated emergency accesses to the property. Those accesses would allow the Division of Fire and Emergency Services to reach the subject property if access to Liberty Road was blocked in the Checkerberry Drive area. The fence to which condition #9 refers is related to those necessary improvements to the property, which can be done based on this preliminary subdivision plan.

Mr. Martin stated that the staff is also concerned about improvements to Woodward Lane, as well as the ability of the Division of Solid Waste to serve the proposed development. The staff is working with the petitioner to ensure that a turnaround is provided, so that solid waste trucks will not have to back up in order to access the property.

Mr. Martin said that this revised plan has addressed the staff's initial concerns about buildable areas on the property, since it is encumbered by a large number of easements. He said that, on the original plan, the easements adversely impacted several lots. The easements that are located in areas that will become public right-of-way will go away upon the dedication of the street, and will become part of the franchise agreements that govern the utilities. The detention basin is also proposed to be located in an area that contains easements, which is why the easement will need to be resolved at the time of the Final Record Plat for the property. Mr. Martin stated that a great deal of work has gone into this revised version of the plan, and the staff is pleased with the results. He said that the staff is now recommending approval of this plan, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree protection area(s) and required street tree information.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. ~~Denote acreage in proposed right-of-way~~ Denote timing of proposed improvements to Woodward Lane, including fence relocation.
10. ~~Denote construction access.~~
11. ~~Clearly delineate all easements.~~
12. ~~Delete development plan notes from general notes.~~
13. ~~Revise right-of-way connection to Wilderness Road right-of-way.~~

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- 10.14. Discuss Denote that existing easement conflicts with proposed right-of-way, detention and lots will be resolved at time of Final Record Plat.
- ~~15. Discuss buildable area for Lots 19, 22 and 43.~~
- ~~16. Discuss access and possible connections to Woodward Lane and Wilderness Road.~~
- ~~17. Discuss gas transmission note on final record plat for adjacent property.~~
- ~~18. Discuss landscape buffer requirements per final record plat on adjacent property.~~

Commission Questions: Mr. Owens asked, with regard to the photographs Ms. Wade had displayed, if any grading had already taken place on the property. Mr. Martin responded that the staff was not aware of any grading permits that had been obtained, but noted that the work on the site could possibly be associated with the utility easements.

Ms. Plumlee asked how wide the Woodward Lane right-of-way is at this time. Mr. Martin responded that its width is approximately 16 feet of pavement; it is listed in deeds for the area as a private road. Ms. Plumlee asked if any improvements have been made to the right-of-way, to which Mr. Martin responded in the negative. Ms. Plumlee asked when those improvements would be made. Mr. Martin answered that he was not sure when those improvements would be made, but they would likely be the responsibility of the Urban County Government. He added that there would be some improvements along the frontage of the subject property in order to improve the access for emergency vehicles and sanitation trucks, but the staff did not anticipate that those improvements would include curbs, gutters, and sidewalks.

Ms. Beatty asked if sidewalk improvements were expected with the proposed development. Mr. Martin responded that the staff was not requiring any improvements of that nature outside of the subject site. He added that the new streets would be built to current standards, with curbs, gutters and sidewalks. Ms. Beatty asked if the petitioner could aid in the completion of those improvements, to which Mr. Martin responded affirmatively. He explained that that was the reason for the staff's recommendation of condition #9. The staff anticipates that those improvements would be made at the time of the construction of the public infrastructure on the property.

Mr. Penn asked how traffic is proposed to flow from the subject property to Liberty Road. Using the rendered development plan, Mr. Martin explained that the only connection to the Checkerberry Drive portion of the proposed development would be via Checkerberry Drive and Graftons Mill Road to Liberty Road; the Woodward Court portion would have access directly to Woodward Lane. He said that there is a chance that, at some point in the future, an adjacent vacant parcel could develop and provide additional access to Graftons Mill Road.

Mr. Owens asked if the petitioner would be responsible for making any of the necessary improvements to Woodward Lane. Mr. Martin responded that the petitioner would be responsible for making pavement improvements and moving the fence along their frontage. If major improvements are ever made to Woodward Lane, the staff anticipates that it will be a public responsibility. Mr. Owens asked if the staff was recommending the construction of sidewalks on the subject property. Mr. Martin answered that the staff does not believe that curb, gutter, and sidewalks would be appropriate in the vicinity of the subject property, since it is an old rural cross-section. The staff is primarily concerned with providing for good vehicular and emergency access to the property at this time.

Petitioner Representation: Matt Carter, Vision Engineering, was present representing the petitioner. He stated that the proposed development is in agreement with the recommendations of the 2007 Comprehensive Plan. Mr. Carter added that the petitioner is in agreement with the staff's recommendations, including the proposed conditional zoning restriction limiting the number of units on the subject property, as well as the conditions proposed for the Preliminary Subdivision Plan.

Commission Questions: Mr. Owens asked, with regard to one of the photographs displayed by Ms. Wade, whether the petitioner had begun grading on the subject property. Mr. Carter answered that the petitioner owns a construction business, and often stores equipment on his property. He said that the petitioner has installed a construction entrance and cleared some brush in anticipation of the approval of this request, but no grading has taken place on the property.

Mr. Owens asked if a grading permit was necessary for the work that Mr. Carter described. Mr. Newman answered that any land disturbance in excess of 5,000 square feet would require a Land Disturbance Permit. Mr. Owens asked if it was known how much land had been disturbed on the subject property, to which Mr. Newman responded that he did not know. Mr. Owens asked if the petitioner had obtained any type of permit for the subject property. Mr. Newman answered that, to the best of his knowledge, no such permits had been issued to the petitioner. He added that the petitioner had made an inquiry about a Land Disturbance Permit, and had been informed that no permit could be issued until either a Final Development Plan or Preliminary Subdivision Plan was certified for the property. Mr. Carter reiterated that the petitioner had not done any grading or construction on the subject property. He confirmed that the petitioner had met with the Division of Engineering and found that a certified plan was required prior to obtaining a Land Disturbance Permit.

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Citizen Support: There were no citizens present in support of this request.

Citizen Opposition: David Royse, 687 and 691 Woodward Lane, stated that his father built houses on those two properties in 1951, and he has lived in the area off and on ever since then. He said that, when he was a child, there was a mercury spill on the subject property, and 12 children from the neighborhood had since died of leukemia.

Mr. Royse stated that Woodward Lane is a private road, according to the deed for each of the properties on the street. He submitted the original plat for the property to the Commission members for their review.

Mr. Royse said that he is concerned about the existing traffic on Liberty Road in the vicinity of Woodward Lane. He added that he does not believe that any portion of the proposed development should have access to Woodward Lane.

Katie McCormick, 695 Woodward Lane, stated that she was also speaking on behalf of her mother, who has resided at 737 Woodward Lane for 56 years. She said that Woodward Lane is rural in character, and no wider than a typical single-car driveway. She added that trying to exit from Woodward Lane onto Liberty Road is "a total nightmare," given the amount of traffic from the Fayette County Public Schools bus garage, as well as vehicles traveling between the Hamburg area, Man O' War Boulevard, and New Circle Road.

Ms. McCormick said that she is concerned that the proposed 47 residences will be out of character with the existing homes on Woodward Lane and Wilderness Road, since most of those residences are on lots of at least 1/3 of an acre in size.

Ms. McCormick stated that several of the residents of Woodward Lane had filed complaints about the petitioner, whose company, Leak Eliminators, did some of the sewer work in the area. She said that the petitioner created a great deal of truck traffic while using the subject property to store fill dirt during that project, and area residents were concerned about the safety of children playing in the street.

Ms. McCormick said that she is also concerned about additional stormwater runoff from the proposed development. She explained that the developer of another adjoining neighborhood assured the residents of Woodward Lane that his development would not exacerbate existing flooding issues on Woodward Lane, but the residents believe that it now floods worse than ever. An underground spring runs under the portion of the property proposed for the construction of 17 houses, and residents are concerned that any attempt to divert that spring will increase runoff on the existing Woodward Lane properties.

Ms. McCormick stated that Woodward Lane residents love the uniqueness of the neighborhood; many of her neighbors have resided there for more than 50 years. She said that the area is not transitional, and it needs to be protected. She asked that the Commission members disapprove this request, in order to protect that existing character and address the residents' concerns. Ms. McCormick concluded that it would not be appropriate to approve any development on the subject property until Woodward Lane is widened and improved.

Charles Logan, 2416 Liberty Road, stated that he, too, was concerned about the impact of increased traffic from the proposed development. He said that traffic in the area is a "quagmire," and that the intersection of Liberty Road and Woodward Lane is located in a particularly bad spot, at the bottom of a hill. Mr. Logan has also had to remove trees from his property, at his own expense, as they interfered with the sight distance at the intersection.

Mr. Logan stated that he was also concerned about stormwater runoff in the vicinity of the subject property. He said all of the runoff from the detention basin in the adjoining Graftons Mill development ended up on his property, which resulted in damage to his back door and mud and mold in the basement. He received a settlement from the developer of the subdivision, but it did not cover his expenses for draining and waterproofing his basement, and properly grading his property to prevent future damage. Mr. Logan added that he was also concerned that he might lose part of his property if Woodward Lane is widened to accommodate the proposed development.

James Hawkins, 671 Woodward Lane, stated that he believes that the petitioner has installed approximately two to three feet of fill on the subject property. He said that, from the limited amount of work done on the property up to this point, he has had to clean out a ditch on his property due to excess runoff.

Mr. Hawkins said that he has lived on his property for 13 years, and, like Mr. Logan, has had to have work done to protect his basement from additional runoff. He opined that each new development in the area adds to the drainage issues on Woodward Lane, increasing the expenses for the residents living there.

With regard to Mr. Martin's comments about emergency vehicle access to Woodward Lane, Mr. Hawkins stated that it was nearly impossible to reach the roadway at all during evening rush hour. He said that, without extensive improvements to the Wilderness Road/Liberty Road intersection, it would also be impossible for emergency vehicles to reach the homes in the proposed development.

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Mr. Hawkins submitted to the Commission members a petition in opposition to this request, including the signatures of all of the resident property owners on Wilderness Road and Woodward Lane. He asked that the Planning Commission consider doing more research on the possible impacts of the proposed development prior to making a recommendation on this request.

Jim Eades, 703 Wilderness Road, stated that sewers had only recently been installed on Wilderness Road and Woodward Lane in the past two or three years. He said that the petitioner's company, which installed the sewers, did not have a sufficient budget to install the sewers correctly, which resulted in damage to several basements. LFUCG then offered a program to assist homeowners with installing sump pumps in homes that had suffered previous water damage. Mr. Eades stated that he does not believe that the existing sewage system in the area has sufficient capacity to handle the proposed 47 homes on the subject property, in addition to the existing residences.

Mr. Eades also echoed other residents' concerns about the width of Woodward Lane and Wilderness Road, and the existing traffic situation on Woodward Lane.

Bryan Morris, 692 Woodward Lane, stated that he is a tenant on that property, which is located nearest the existing gate to the subject property. He said that stormwater runoff from the Columbia Gas property is so severe that it has moved the large railroad ties that line his driveway.

Mr. Morris said that "pulling off on Woodward Lane is like pulling out of Lexington." He stated that he lives there because he appreciates the rural character of the area, and he asked the Planning Commission members to recommend disapproval of this request, in order to protect that character.

Mr. Royse stated that, historically, there was no address for the property at 690 Woodward Lane; the Columbia Gas property was listed on Wilderness Road. He said that, until five years ago, there were houses only on the right side of Woodward Lane. At that time, the petitioner purchased several properties from Habitat for Humanity, one of which eventually became 690 Woodward Lane.

Steven Shaw, 683 Woodward Lane, stated that he is concerned about the site of the proposed access from the subject property, which is very near his property. He said that there is a 12" steel, 800 psi gas transmission line that runs in that vicinity, and he does not believe it would be safe to allow construction activity near there.

Mr. Shaw reiterated the other residents' concerns about stormwater runoff and the narrow width of Woodward Lane.

Hart Graves, 1306 Fincastle Road, stated that she is the president of the Liberty Area Neighborhood Association. She said that she is concerned about the residents of Woodward Lane and Wilderness Road, particularly with regard to the existing difficult traffic situation on Liberty Road. She noted that the Wilderness Road/Liberty Road/New Circle Road area is one of the most dangerous areas in Lexington, and she does not believe that any additional residences should be constructed there without a great deal of research into the options for improving traffic.

Ms. Graves added that she also shares the residents' concerns about the past mercury spill on the subject property, and the existing gas transmission lines.

J.W. Bailey, 713 Woodward Lane, stated that after the sewer system was installed on Woodward Lane, he was informed by the LFUCG Division of Engineering that the base of Woodward Lane is not up to standard, so it could not be repaved. He said that any upgrade of Woodward Lane to accommodate the additional traffic from the proposed development would require that the existing base be completely removed and replaced, which would be extremely costly to the citizens of Lexington-Fayette County.

William Riggs, 732 and 740 Wilderness Road, stated that he has resided there for 43 years. He said that he agreed with many of his neighbors' concerns about traffic in the area. He is also concerned that the petitioner has been installing fill on the subject property, as dump trucks have been accessing the property since last summer.

Ron Crim, 679 Woodward Lane, said that he was unsure of the exact location of his property line. He said that, according to his deed, he owns the portion of the roadway adjoining his property, and he would like to be compensated for the use of it by others.

Mr. Royse stated that LFUCG paved Woodward Lane in order to add the three newer houses to the sewer system. He said that, at that time, the government agreed to maintain the road forever.

Mr. Logan said that, in addition to the other traffic issues in the area, the FCPS blocks traffic on Liberty Road in order to let the busses out for their afternoon runs.

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Petitioner Rebuttal: Mr. Carter reiterated that this rezoning request is in agreement with both the 2007 and 2013 Comprehensive Plans' Goals & Objectives. He said that the Comprehensive Plan recommends between 34 and 83 lots for the subject property; the petitioner is proposing 47, which is considerably less than the maximum recommendation.

Mr. Carter said that the 2013 Goals & Objectives state that, "underutilized property should be developed to its maximum extent possible" in order to protect the Urban Service Area boundary. The subject property is listed on the underutilized property map. In addition, the proposed development is comparable in density and character with the existing newer neighborhoods in the area.

Commission Question: Ms. Mundy asked if any soil studies have been done on the subject property with regard to the comments about mercury spills or chemical contamination. Mr. Carter said that he was not aware of any such studies. He added that the petitioner is not proposing to construct any residences in the area that residents indicated was the location of the mercury spill.

Staff Rebuttal: The staff had no rebuttal comments.

Commission Questions: Ms. Plumlee thanked the neighborhood residents for voicing their concerns; she reminded them that neighborhoods change, and they need to be willing to adapt to that change. She said that, at this point, she questions the appropriateness of this proposed development going forward, because she believes that it needs a better timetable. She agreed that this proposal complies with the Comprehensive Plan, but opined that, "that does not give us permission to be sloppy in our development."

Ms. Mundy also thanked the residents for attending this meeting and voicing their opinions. She said, with regard to residents' concerns about the proposed development exacerbating existing stormwater runoff issues, that the construction of curbs, gutters and sidewalks on the subject property could actually improve that situation. Ms. Mundy added that she believes that some additional research might be necessary, and acknowledged that the traffic situation on Liberty Road can be difficult; but "that is part of progress." She said that the Commission has been tasked with approving infill projects, and the subject property has been identified as underutilized.

Mr. Owens also thanked the residents for their input. He said that he believes that the proposed development will go forward at some point; but he is not comfortable with it doing so at this point, given the concerns that were raised at this hearing.

Ms. Beatty echoed Mr. Owens' comments, agreeing that she did not believe that either the proposed rezoning or development plan was ready to move forward at this point. She proposed that the Commission postpone this request in order to work with the staff, petitioner, and community to resolve some of the issues that were raised.

Motion: A motion was made by Ms. Mundy and seconded by Mr. Wilson to postpone MAR 2013-18 for one month.

Discussion of Motion: Mr. Cravens asked if it would be more appropriate to continue this request, rather than postpone it. Ms. Jones answered that it would be more appropriate to continue this request, and that the Commission must act on it by January 30th in order to meet their 90-day deadline.

Withdrawal and restatement of motion: Ms. Mundy withdrew her motion, to which Mr. Wilson concurred. A motion was made by Ms. Plumlee and seconded by Mr. Wilson to continue MAR 2013-18 to the January 30, 2014, Planning Commission meeting.

Commission Comment: Mr. Penn stated that there were a large number of issues that needed to be resolved with regard to this request, and in a short timeframe. He encouraged the petitioner to work hard on the concerns, and be productive in addressing them.

Action: Ms. Plumlee's motion carried, 9-0 (Brewer and Drake absent).

3. DR. ANDREW P. SCHROYER, D.V.M., ZONING MAP AMENDMENT & DOZIER PROPERTY ZONING DEVELOPMENT PLAN

- a. MAR 2013-21: DR. ANDREW P. SCHROYER, D.V.M. (2/2/14)* - petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Planned Neighborhood Residential (R-3) zone, for 3.57 net (3.57 gross) acres; and from an Agricultural Urban (A-U) zone to a Professional Office (P-1) zone, for 1.47 net (1.77 gross) acres, for property located at 3581 Harrodsburg Road.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends Low Density Residential future land use for the subject property, which is defined as 0-5 dwelling units per net acre. The petitioner proposes to rezone the front 1½ acres of the

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property to P-1 in order to develop a new office building, and the remainder of the subject property for a single-family residential development of 16 lots.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The requested Planned Neighborhood Residential (R-3) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:
 - a. The Plan recommends a Low Density Residential land use for this portion of the subject property, defined as 0-5 dwelling units per net acre.
 - b. The petitioner proposes 16 single family lots on 3.57 net acres, and a density of 4.48 units per acre.
 2. The existing Agricultural Urban (A-U) zone is inappropriate, and the requested Professional Office (P-1) zone is appropriate for the front 1.5 acres of the subject property, for the following reasons:
 - a. The site is too small to yield a productive agricultural use, and has not been farmed for many years.
 - b. P-1 zoning would permit an office building to be developed in a manner consistent with other existing office buildings in this general area. Several of those are adjacent to low density residential uses.
 - c. The P-1 zone could be accessed from the Wellington Way collector street via Palomar Centre Drive, which serves most other professional office uses located in this general vicinity.
 - d. A "step-down" in land use intensity would result from this proposed development pattern, with offices abutting lower density residential uses.
 3. This recommendation is made subject to approval and certification of ZDP 2013-102: Dozier Property, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of any Planning Commission approval.
- b. ZDP 2013-102: DOZIER PROPERTY (2/2/14)* - located at 3581 Harrodsburg Road.
(S. Mark McCain)

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-3 & P-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Revise note #9 to read: Lots 2-16 shall be limited to one single family dwelling unit per lot.
9. Discuss proposed detention conflict with zone-to-zone screening requirements.
10. Discuss access proposed to Harrodsburg Road.
11. Clarify extent of tree protection proposed (in site statistics) for 50' T.P.E on site.

Zoning Presentation: Mr. Sallee presented the staff report, briefly orienting the Commission to the location of the subject property northeast of Man O' War Boulevard, a short distance from Wellington Way. He said that the subject property is a long, narrow tract that is currently and entirely zoned A-U. The petitioner is requesting to rezone the rear $\frac{3}{4}$ of the property to R-3, and the front $\frac{1}{4}$ to P-1. There is R-3 zoning immediately to the north, for the existing residences located along Palomar Trace Drive; and P-1 zoning exists immediately to the south, for properties that include a bank, the petitioner's veterinary clinic, and an athletic club facility.

Mr. Sallee stated that the 2007 Comprehensive Plan recommends Low Density Residential use for the subject property, so the portion of the zone change to R-3 can be considered to be in agreement with the Comprehensive Plan. Since the petitioner is requesting 15 single-family lots for that portion of the property, with a resulting density of 4.2 dwelling units per net acre. Mr. Sallee said that the P-1 portion of this request is not in agreement with the Comprehensive Plan, but the staff has provided findings in the staff report, indicating that they believe that that zone is appropriate for the front of the subject property, and the A-U zoning is no longer appropriate. The staff believes that the property's proximity to existing P-1 zoning; the fact that it will have access to Wellington Way and the other P-1 properties through the Schroyer Property immediately to the southwest; and the fact that this rezoning could achieve the traditional "step-down" of land use intensity from the Low Density Residential properties on Palomar Trace Drive, to the Professional Office areas, to the more intensive business uses in the Palomar Centre. Mr. Sallee stated that the staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda, but with a set of revised findings which had been distributed to the Commission members. He noted that a Traffic Impact Study was prepared in conjunction with this request, and he would summarize those results for the Commission following presentation of the zoning development plan.

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Development Plan Presentation: Ms. Gallt presented the corollary zoning development plan, noting that the petitioner had submitted a revised version of the plan that addressed some of the Subdivision Committee's conditions for approval, which are listed on the agenda. The staff is now recommending approval of this development plan request, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-3 & P-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Revise note #9 to read: Lots 2-16 shall be limited to one single family dwelling unit per lot.
9. ~~Discuss~~ Resolve proposed detention conflict with zone-to-zone screening requirements (Lot 1).
10. ~~Discuss~~ Denote that access proposed to Harrodsburg Road will be resolved at time of Final Development Plan.
11. ~~Clarify extent of tree protection proposed (in site statistics) for 50' T.P.E on site.~~

Ms. Gallt stated that condition #8 refers to a note on the plan which needs to be revised, since one of the lots will be used as a detention area. Condition #9 refers to the staff's concern about protecting the existing treeline to the rear of the single family lots, since zone-to-zone screening is required for the adjacent P-1 property. With regard to condition #10, Ms. Gallt noted that the petitioner has indicated that they have begun discussions with the Kentucky Department of Transportation about the proposed access to Harrodsburg Road. The staff is recommending that the details involving that access be resolved at the time of the Final Development Plan for the property.

Traffic Impact Study Presentation: Mr. Sallee summarized the Transportation Planning staff's report on the petitioner's Traffic Impact Study, noting that it projected full development for this proposal in 2018. Referring to page 1 of the report, he said that traffic counts in the area are approximately 34,000 trips per day on both Man O' War Boulevard and Harrodsburg Road, with slightly fewer trips on the other major roadways in the area. The proposed office building is projected to have a much greater impact on traffic in the vicinity than the 15 single family lots. Mr. Sallee stated that the study indicated that the proposed development would result in minor impacts on traffic delays in the area, but the Transportation Planning staff did not necessarily agree with that assessment. Mr. Sallee said that they did agree that the projected Levels of Service are generally acceptable in this area, and that the study was performed according to the requirements of the Zoning Ordinance.

Petitioner Presentation: Richard Murphy, attorney, was present representing the petitioner. He said that the petitioner is in agreement with the staff's recommendations on the zone change and development plan.

Mr. Murphy thanked the residents of Palomar Trace Drive, who recently met with the petitioner at his veterinary clinic. At that meeting, the petitioner explained the proposed development to the residents, who in turn expressed their concerns. Based on the residents' concerns, the petitioner has agreed to install a fence on the western edge of the P-1 area, between it and the R-3 area. In addition, Mr. Murphy explained that the petitioner has agreed to not provide pedestrian or vehicular access between the residential and professional office areas.

Citizen Comments: No citizens present wished to speak about this request.

Zoning Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 9-0 (Brewer and Drake absent) to approve MAR 2013-21, for the reasons provided by the staff in their revised findings.

Development Plan Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 9-0 (Brewer and Drake absent) to approve ZDP 2013-102, subject to the 10 revised conditions as recommended by the staff.

4. RTA FAMILY TRUST, ROYCE G. PULLIAM, TRUSTEE, ZONING MAP AMENDMENT & SCHROYER PROPERTY (RTA FAMILY TRUST) ZONING DEVELOPMENT PLAN

- a. MAR 2013-19: RTA FAMILY TRUST, ROYCE G. PULLIAM, TRUSTEE (2/2/14)* - petition for a zone map amendment from a Planned Neighborhood Residential (R-3) zone to a Neighborhood Business (B-1) zone for 0.8108 net (1.0549 gross) acre; and from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 0.7561 net (0.8127 gross) acre, for properties located at 1009 and 1017 Wellington Way.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends Professional Services (PS) future land use for the subject property. The petitioner proposes a three-story building with retail uses and a coffee shop on the first floor, and professional offices on the second and third floors. Conditional zoning restrictions are proposed by the applicant to limit

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the use of the property, and a dimensional variance to the height of the building is also being requested with this zone change request.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reason:

1. The requested Neighborhood Business (B-1) zone with conditional zoning restrictions is in substantial agreement with the 2007 Comprehensive Plan for the following reasons:
 - a. The Land Use Element recommends Professional Services (PS) land use for the subject property, and the applicant proposes over 16,000 square feet of office space within a single three-story building.
 - b. The proposed retail space and restaurant land uses are in addition to meeting the basic land use recommendation and will provide services to the office tenants and to the immediate neighborhood.
 - c. The subject property is walkable to and from the adjoining residential neighborhoods, as well as other commercial uses in the immediate vicinity. The property is easily accessible from major urban corridors, although transit is not readily available in the area.
 - d. The Goals and Objectives of the 2007 and 2013 Comprehensive Plans support and encourage the creation of a variety of jobs and business opportunities, and the site proposes new employment opportunities within the proposed 23,300 square-foot building.
2. This recommendation is made subject to approval and certification of ZDP 2013-101: Schroyer Property (RTA Family Trust) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the use of the subject property shall be restricted as follows:

PROHIBITED USES

- a. Automobile service stations.
- b. Repair of household appliances.
- c. Retail sale of plant, nursery or greenhouse products.
- d. Miniature golf or putting courses.
- e. Carnivals.
- f. Arcades, including pinball and electronic games.
- g. Banquet facilities.
- h. Rental of equipment whose retail sale is permitted in the B-1 zone.
- i. Outdoor live entertainment, cocktail lounges, brew-pubs or nightclubs.
- j. Upholstery shops.
- k. Circuses.
- l. Automobile and truck refueling stations.

OTHER USE RESTRICTIONS

- a. Retail sales and other uses first permitted in the B-1 zone shall be limited to the first floor of the structure.

These restrictions are appropriate and necessary in order to permit only less intense land uses adjacent to a proposed single-family residential area, and because the applicant has proposed such limitations.

b. **REQUESTED VARIANCE**

Increase the maximum height of a building in the B-1 zone from 25 feet to 60 feet.

The Staff Recommends: **Approval of the requested height variance**, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. Tall office buildings are common in areas such as this, which have been recommended for Professional Services use by the Comprehensive Plan.
- b. Granting this request will not allow an unreasonable circumvention of the Zoning Ordinance, but rather will provide a means to allow the applicant to design an architecturally significant signature building for this commercial area. Again, tall office buildings exist in Professional Service areas.
- c. The special circumstances that apply to the subject properties that serve to justify the variance are architectural considerations and the proposed drive-through facilities that dictate the need for a height greater than 25' or 35'.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant, as considerable effort and forethought have gone into the design of the building.
- e. The need for the variance was recognized during the normal design process for the building. Thus, there is not any willful violation of the Zoning Ordinance associated with this request.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the properties B-1; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as

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- amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
 4. The building shall be limited to no more than 3 stories in height.
 5. The maximum height of the top of the main roof's cornice shall be no more than 50' in height, with noted exceptions to allow a central feature on the front and rear facing walls that shall be no more than 60' in height.
- c. ZDP 2013-101: SCHROYER PROPERTY (RTA FAMILY TRUST) (2/2/14)* - located at 1009 and 1017 Wellington Way. **(Wheat & Ladenburger)**

Note: This plan requires the posting of a sign and an affidavit of such.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote construction access location.
8. Denote that the 3rd floor of this building may not be used for residential purposes.
9. Discuss temporary access easement from adjoining property (DP 2010-82).
10. Discuss proposed dumpster location.

Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property on Wellington Way, off of Harrodsburg Road. She stated that 1009 Wellington Way is currently zoned R-3, and 1017 Wellington Way is zoned P-1. The property is bordered to the east and west by other Professional Office zoning; to the south, by Neighborhood Business zoning and the Palomar Shopping Centre, and to the north by the Dozier property, for which a rezoning request was considered by the Planning Commission earlier in this hearing.

Ms. Wade stated that the area surrounding the subject property is characterized primarily by business uses, but there are some residential uses further to the north and east. In the immediate vicinity are office condominiums; a Panera restaurant; the Palomar Shopping Centre; branch banks; a veterinary clinic; and several athletic facilities. The R-3 portion of the subject property is currently occupied by the La Petite Academy daycare center, but the rest of the property remains vacant. Ms. Wade displayed an aerial photograph of the subject property, noting the location of the shopping center and the large athletic facility across Wellington Way.

Ms. Wade said that both parcels of the subject property were originally rezoned to R-3 in 1988 to accommodate the childcare center. After the property was rezoned, the childcare center chose to occupy a smaller portion of the property than was originally proposed, which left a fraction of the property vacant. In 2002, that vacant parcel was rezoned to P-1; in both cases, the rezonings were in agreement with the Comprehensive Plans at that time. At the time of the 2002 rezoning, the property owner hoped to find a suitable user for the property, but that never occurred. The owners of the neighboring office condominium development are the petitioners in this rezoning request.

Ms. Wade stated that the petitioners are proposing to rezone the subject property in order to develop an office building with retail and coffee shop uses on the first floor, and office uses on the second and third floors. The building is proposed to be 23,300 square feet in size, with approximately 16,000 square feet being occupied by office uses. The 2007 Comprehensive Plan recommends Professional Office land use for the subject property. Since a portion of the property is already zoned P-1, and a childcare center is generally considered a service use, the existing land use is in agreement with the Comprehensive Plan. Since the petitioner is proposing to construct a building with mostly office uses, the staff would consider that to be in substantial agreement with the Comprehensive Plan recommendation. Ms. Wade explained that the proposed office building would be permitted in the P-1 zone; if it were to be 40,000 square feet or larger, it could have the proposed restaurant use in it. Since the building is to be smaller, however, the B-1 zone is necessary to accommodate the proposed uses. The petitioner is addressing the basic use recommendation of the Land Use element of the 2007 Comprehensive Plan, and they contend that their proposal will provide needed uses to the immediate neighborhood. The petitioner also contends that they are furthering Theme C of the 2013 Comprehensive Plan Goals & Objectives, which relates to creating jobs and prosperity.

Ms. Wade said that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda. The staff believes that conditional zoning restrictions are important for the subject property, and they are recommending approval of the restrictions proposed by the petitioner. Those restrictions include prohibiting a number of the more intense B-1 uses, such as live entertainment; cocktail lounges; nightclubs; carnivals; miniature golf; nurseries and greenhouses; and automobile service stations, as well as a few other uses. The staff is

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also recommending the prohibition of some other B-1 uses that are not also P-1 uses, above the first floor. Those prohibited uses include retail sales and restaurant uses.

Development Plan Presentation: Mr. Jarman presented the corollary preliminary development plan, explaining that the petitioner is proposing to construct a three-story building on the subject property, utilizing most of the existing vacant lot for the required parking. He stated that the Subdivision Committee recommended approval of this plan, subject to the 10 conditions as listed on the agenda. Since that meeting, the staff found a note on a previous plat, wherein the access easement to which condition #9 refers, expired in 2005, with the opening of Wellington Way. Therefore, condition #9 can now be deleted. With regard to condition #10, Mr. Jarman stated that the language should be changed to read: "Denote: The dumpster location will be finalized at the time of the Final Development Plan." He said that the staff is concerned about the path to the dumpster location on the property, as well as its location so near to the adjacent (proposed) residential area.

Commission Questions: Mr. Owens asked if the dumpster would need to be moved. Mr. Jarman answered that there was some discussion at the Technical Committee and Subdivision Committee meetings about the need to relocate the dumpster.

Variance Report: Mr. Emmons presented the staff's report on the requested variance, explaining that the petitioner is requesting to vary the height of the building to allow a structure that is taller than what is permitted under the existing zoning. Referring to a rendering of the proposed building, Mr. Emmons said that the petitioner had put a great deal of forethought into the design of the structure, which has several special features. The petitioner is proposing to construct a drive-through facility that will go under the building to serve a first-floor coffee shop. That design feature necessitated additional height on the first floor of the structure, in order to allow vehicles to pass under the building. The petitioner is also proposing the additional height to provide a central architectural feature on the structure.

Mr. Emmons stated that, until very recently, a commercial-only building in the B-1 zone was allowed to be 25 feet in height. If a mixture of commercial and residential uses was provided, the building could be as tall as 35 feet. The Urban County Council recently approved a text amendment to the B-1 zone, and all buildings in the zone are now allowed to be 35 feet in height.

Mr. Emmons said that the staff initially questioned the petitioner's request to allow a height variance up to 60 feet for the proposed structure, since it would be only three stories tall. In response, the petitioner provided cross-sections of the central section of the building. Upon reviewing those cross-sections, the staff determined that the building itself is proposed to be 45 feet in height to the top of the main parapet, with a central architectural feature proposed to be 53 feet, eight inches at the pinnacle. The parapet is proposed to be constructed around the top of the roof in order to conceal the mechanical equipment that will be located there.

Mr. Emmons stated that, once the staff determined that the actual height of the building is proposed to be 45 feet, and that a building height of 35 feet is permitted in the B-1 zone, concerns about the requested variance were somewhat mitigated. In order to ensure that the building does not exceed three stories, the staff is recommending a condition that the structure be limited to three stories, with a maximum height of 50 feet for the primary roof, and 60 feet for the central architectural feature. Those heights are approximately five feet taller than what is being requested by the petitioner; but the staff believes that those heights, with the additional restrictions proposed by staff, will provide the petitioner the design flexibility to construct a "signature" building without changing the basic character of the B-1 zone. Mr. Emmons said that the staff is recommending approval of this requested variance, for the reasons as listed in the staff report and on the agenda.

Commission Questions: Mr. Wilson asked if the elevation of the property has anything to do with the height of the building. Mr. Emmons answered that the height of the building is measured from the point where the front of the structure touches the ground, to the highest point of the roof.

Mr. Owens asked why the staff is suggesting heights of 50 and 60 feet, when the petitioner is proposing heights of 45 and 53 feet. Mr. Emmons responded that the staff believes that limiting the building to three stories in height will ensure that the building stays within the character of the B-1 zone. Providing five feet of "wiggle room" will allow the petitioner some extra flexibility in case the drive-through area needs to be taller to accommodate vehicles. Mr. Owens stated that the petitioner should have thought through those issues prior to filing their rezoning and variance requests. Mr. Emmons said that the petitioner's architect informed the staff that they are just beginning to design the building at this point, having presented the "concept phase" for this variance request.

Petitioner Representation: Christine Westover, attorney, was present representing the petitioner. She stated that the petitioner is in agreement with the staff's recommendations, and appreciated the staff's willingness to work on the necessary details of the proposed structure.

Ms. Westover stated that the petitioner is proposing to construct a "signature building," rather than a typical suburban of-

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fice building. More than 2/3 of the building is proposed to be used for traditional Professional Office uses, with the first floor dedicated to a coffee shop or some other type of retail use. Ms. Westover noted that, if this building were to be constructed in the existing P-1 zone, it could be as high as the petitioner is proposing, without the need for a variance.

Ms. Westover said that the development community has been tasked with providing appropriate infill within the Urban Service Area, in order to reduce the pressure to expand urban uses into rural areas. The petitioner contends that the proposed structure will be "the perfect use in the perfect location," because it will provide needed goods and services for the area residents, as well as the users in the nearby office condominium development. The project will be walkable, and it will comply with many of the identified Themes of the new Comprehensive Plan.

Planning Commission Question: Mr. Owens asked if the petitioner needed five feet of "wiggle room" in constructing the proposed building. Steve Graves, architect, answered that the pass-through on the first floor of the building might need additional height in order to provide a drive-through for the coffee shop and bring style and a sense of scale to the building. He said that each of the three floors is proposed to be 14 feet in height, with a four-foot parapet on the roof to conceal the mechanical equipment.

Mr. Owens said that he understood the need for a parapet wall, but he did not understand why the height of a drive-through could change. Ms. Westover stated that there were some concerns at the Zoning Committee about the depth of the foundation of the proposed building, and at what point the height would be measured. Mr. Graves stated that the finished floor elevation would be as low as possible.

Citizen Opposition: Michael Walsh, 2153 Palomar Trace Drive, submitted a petition, signed by 23 of the residents on his street, in opposition to this rezoning request. He read the following statement into the record, from the petition:

"I oppose this development plan. The height of the proposed sixty-foot, three-story building is inconsistent with that of adjacent commercial buildings in this professional services area. It is being constructed on the highest elevation on the street, and it will adjoin residential lots with single family homes. Nowhere within the area between New Circle Road, Harrodsburg Road, Man O' War Boulevard, and Parkers Mill Road does a three-story commercial building adjoin residential lots with single family homes. Within this same area, there are only two commercial properties that adjoin residential lots with single family homes. That is Wellington Way Office Condominiums, at 1055 Wellington Way, and Kerr Brothers Funeral Home, at 3421 Harrodsburg Road. The buildings on these two properties are less than three stories; they're built to a residential scale; and they have rooflines that are below the height of the deciduous treeline buffer between them and the adjoining single family homes. They also start at a lower elevation, at or below their respective street levels. The proposed 60-foot, three-story building is also inconsistent with the four other commercial buildings that adjoin or are adjacent to it. They are Wellington Way Office Condominiums at 1031 Wellington Way; Tiger Kim's Tae Kwon Do, at 3061 Palomar Center Drive; the Animal Care Clinic, at 3600 Palomar Center Drive; and Chase Bank, at 3645 Harrodsburg Road. All of these buildings possess the same desirable design characteristics as the two commercial properties in the area that adjoin residential lots with single family homes: they're less than three stories; they're built to residential scale; and they have rooflines below the height of the deciduous treeline surrounding them. This proposed building lacks all of these desirable design characteristics; yet, it will adjoin residential lots with single family homes. The starting elevation of this proposed sixty-foot, three-story building is the highest point on this section of Wellington Way. As a result, the tallest, non-residential scale, and only three-story commercial building on the street is proposed for the highest elevation on that street. Currently, from any point on Palomar Trace Drive, the view of the rooflines of these commercial buildings on Wellington Way is below the height of the deciduous treeline buffer. That view will be drastically altered if this proposed sixty-foot, three-story building is approved and constructed. As previously stated, there are no three-story commercial buildings that adjoin residential lots with single family homes in the area described earlier. The only place within that area where three-story commercial buildings are located is within and around the Beaumont Circle, and between the Beaumont Circle and New Circle Road. Clearly, this is an intentional design feature to separate tall commercial-scale buildings from single family residential homes. Whether intentional or not, the desirable design characteristics of the Wellington Way Office Condominiums and Kerr Brothers Funeral Home properties have maintained and established positive development precedent in regards to commercial and professional office buildings that adjoin residential lots with single family homes in this professional services area. I ask the Planning Commission to maintain this well-established, positive development precedent that has been in place since commercial and professional activity began in this area over 25 years ago. I ask the Commission to reject this proposed plan and approve one for this professional services area that includes a building that is consistent with those around it and complements the area. I ask the Commission to approve a building that is less than three stories; built to residential scale; and has a roofline below the height of the deciduous treeline between it and the adjoining single family homes."

Mr. Walsh displayed several photographs of other structures that are sixty feet tall, including: the heads on Mount

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Rushmore; the chicken at the Big Chicken Restaurant, in Marietta, Georgia, noting how far it rises above the surrounding treeline; and the control tower at Bluegrass Airport, noting the height of the tower compared to the airport building. He displayed photographs of the Kerr Brothers Funeral Home and Wellington Way Office Condominium buildings, noting that, although they are taller buildings, they have the same scale as the nearby residential homes, and they complement and fit in with the residences.

Mr. Walsh stated that he believes that a building 45 feet in height should be more than adequate for the uses proposed on the subject property, since it will be more than twice the size of the existing Tae Kwon Do building, which will directly adjoin it. He reiterated that he believes that the proposed structure will overwhelm, rather than complement, the immediate area.

Dr. Butch Schroyer, 3581 Harrodsburg Road, stated that his veterinary clinic has been located at that address since 1988. He said that he welcomes change and growth, and expects infill, but he is concerned about the possible traffic impact of the proposed office building on the surrounding area.

Dr. Schroyer stated that, as part of his own rezoning application, he provided a traffic study in order to assuage his fears that additional development would not overwhelm the area with traffic. He said that the Chase Bank and veterinary clinic produce a significant amount of traffic, particularly at the afternoon peak hour. The petitioner is also proposing a short traffic stacking area for the coffee shop, which would result in backups of drivers attempting to reach the bank, Tae Kwon Do studio, and veterinary clinic.

Dr. Schroyer said that, when he applied for the original rezoning on the subject property, it was originally designed to spread the parking throughout the property. The petitioner is now proposing to place the office building on the property where the daycare currently exists, and use the vacant property for parking. That configuration would provide Dr. Schroyer's customers with a "clean" exit to Wellington Way, rather than exiting directly into a short stacking area.

Dr. Schroyer suggested that the Planning Commission require the submission of a traffic study with this request, in order to analyze the impact of the proposed development on the immediate area. He added that he does not believe the area needs another coffee shop, since the Panera Bread restaurant is located directly across the street, and he does not believe that the proposed drive-through under the building is necessary.

Vicky Bransom, 2157 Palomar Trace Drive, stated that she, too, is concerned about the traffic impact in the area, since it is "horrendous" at the intersection of Palomar Centre Drive and Wellington Way. She said that there have been many accidents at that location, one of which involved her daughter.

Ms. Bransom opined that the rendering of the proposed building is attractive, but it is inappropriate for the subject property, because it overwhelms the lot. She said that she loves living in Lexington, and is not opposed to development and progress; however, progress needs to be approached thoughtfully. Ms. Bransom concluded by saying that the size and scale of the proposed building are not compatible with the nearby residences.

Petitioner Rebuttal: Ms. Westover stated that the Planning Commission, the Urban County Council, and the community have agreed to focus developments more intensively within the Urban Services Area, and "grow up instead of out." The petitioner contends that the proposed development is trying to do exactly that.

Ms. Westover said that the fact that there are no other three-story commercial buildings in the vicinity is not dictated by regulations; the height of a Professional Office building is dictated by the size of the building and its relationship to the lot. She added that, if the subject property was developed with an office building under the existing P-1 zone, it could be at least as tall as the proposed building, and perhaps taller. In addition, the recent B-1 text amendment increased the allowable height of buildings in the B-1 zone to 35 feet, as well as provided some new form-based criteria. For the first time, the Planning Commission has the ability to amend the height and setbacks of a building based on its form. Ms. Westover opined that the approval of that text amendment indicates that the Planning Commission is willing to consider good design in relation to the property, and not set "arbitrary" limits. She said that good and creative design should be encouraged, rather than requiring everything to look the same.

Ms. Westover stated, with regard to the concerns about traffic in the vicinity, that the petitioner had worked extensively with the staff, who indicated that no traffic study was required because the impact of the proposed development was not estimated to generate the need for a study. She said that the existing daycare center had 100 – 200 children enrolled, with 6:30 a.m. to 6:00 p.m. operating hours, some vans, and many individual drop-offs each day. Since the daycare center is relocating, all of that traffic will be removed from the area, which provided the staff with some reassurance that no traffic study would be needed. Ms. Westover said that the subject property is located in a heavily traveled urban area, and a portion of it is vacant; she believes that it is a better location for the proposed building than vacant land in the Rural Service Area.

Ms. Westover stated that there is a heavy, evergreen treeline along the rear of the subject property, and a 30-foot tree

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protection area planned on the adjacent tract. She said that would provide a heavy screen between the proposed office building and the residences on Palomar Trace Drive. Mark Yates, petitioner's representative, presented several photographs of the subject property, with renderings to indicate the height and location of the proposed building. He noted that the Urban Active fitness facility is only two stories, but is 41 feet in height. The petitioner contends that the subject property is well-suited for the proposed office building, since it is walkable and has several nearby restaurants. Mr. Yates noted that the renderings indicate that the residents on Palomar Trace Drive will likely be able to see only a small portion of the top of the proposed building from their residences, due to the grade changes and heavy evergreen screening on the adjoining property.

Ms. Westover said that there is a three-story apartment complex located just across Harrodsburg Road from the subject property. She stated that the fabric of the community requires various types and heights of buildings. The petitioner contends that they are striving to create a better development, with a unique and original design. Ms. Westover requested approval of the zone change, variance, and development plan, as recommended by the staff.

Opposition Rebuttal: Mr. Walsh stated that the three-story apartments to which Ms. Westover referred are built lower than Harrodsburg Road, so that only the top two stories of the buildings are visible. He added that some of the evergreen trees on the adjoining property (which was also discussed at this hearing) will be removed when the single family homes are constructed along Palomar Trace Drive.

Dr. Schroyer reiterated that he is concerned about the short vehicular stacking area for the parking lot. He added that he is also concerned about the 10-foot drop-off at the proposed location for the connection between the adjoining parking area and the subject property.

Ms. Westover stated that the parking will have to be graded lower in order to make that connection, which will eliminate the hill rise and will result in the building being lower than the neighbors expect.

Staff Rebuttal: Mr. Sallee stated, with regard to the comments about the need for a traffic study, that such studies are required for developments that will generate 100 or more additional new peak-direction trips. The proposed development would have met that threshold, were it not for the fact that the existing childcare center is being removed. With the subtraction of the traffic that that use generates, Mr. Sallee said, it does not surpass the 100-trip threshold of the Zoning Ordinance.

Commission Question: Ms. Beatty asked if the Division of Traffic Engineering reviewed the proposed traffic circulation on the subject property. Ms. Kaucher replied that the Division of Traffic Engineering had reviewed the development plan and worked with the petitioner to resolve the internal and external accesses. She said that Harrodsburg Road is a state roadway over which LFUCG has no jurisdiction, but the Division of Traffic Engineering did review the proposed access to the subject property as they relate to the Palomar Trace Drive/Wellington Way intersection. The development plan will require additional work, but Ms. Kaucher noted that the Division of Traffic Engineering is comfortable with the parking and access configuration at this stage in the rezoning process.

Ms. Blanton stated that the Planning Commission had just approved a three-story building in the P-1 zone near the subject property, which will be nearly the same height as the proposed building and located near single family homes. She said that the proposed office building does not directly adjoin any residential structures, and indicated that she was prepared to make a motion for approval.

Mr. Penn stated that he was in support of the zone change and development plan, but he was not willing to approve the height variance of 60 feet. He said he believed that the petitioner could reduce the height and still provide a signature feature on the proposed building.

Mr. Owens agreed with Mr. Penn, and reiterated that he did not understand the petitioner's need for "wiggle room" of five additional feet.

Ms. Mundy asked how far down the lot will be graded. Ms. Westover stated that the property will likely be graded down five feet, and that the petitioner would be agreeable to a slight reduction in their height variance. She said that the petitioner would be willing to reduce the amount of the variance by five feet.

Mr. Owens asked Ms. Westover to clarify the petitioner's offer to reduce the amount of the height variance. Ms. Westover confirmed that the petitioner would be willing to reduce the requested variance from 60 feet to 55 feet. Mr. Owens suggested a height of 45 feet for the parapet, and 55 feet for the central feature, to which Ms. Westover agreed.

Zoning Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 8-1 (Brewer and Drake absent; Plumlee opposed) to approve MARV 2013-19, for the reasons provided by staff, subject to the conditional zoning restrictions as recommended by the staff.

Variance Action: A motion was made by Ms. Blanton, seconded by Mr. Penn, and carried 9-0 (Brewer and Drake ab-

sent) to approve a height variance of 45 feet for the overall roofline, and 55 feet for the signature feature, for the reasons provided by the staff.

Development Plan Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 9-0 (Brewer and Drake absent), to approve ZDP 2013-101: Schroyer Property (RTA Family Trust) subject to the nine revised conditions as provided by the staff.

VI. COMMISSION ITEMS

- A. ANNUAL REPORT FOR THE COURTHOUSE AREA** – Beth Overman, TITLE???, stated that the Zoning Ordinance requires that a report be presented to the Planning Commission each year, summarizing the activities of the Courthouse Area Design Review Board (CHADRB). She explained that Billy Van Pelt, who formerly served as the Design Review Officer and Secretary of the CHADRB, had departed in October. Since that time, Commission Paulsen has been serving as the Design Review Officer, while Ms. Overman has performed the duties of the Secretary.

Ms. Overman noted that copies of her presentation had been provided to the Commission members prior to the start of the meeting. She stated that the Ordinance creating the CHADRB was enacted in 2001. The overlay area currently contains 90 parcels, which comprise 23.53 gross acres. The meetings are scheduled quarterly, or on an as-needed basis; there were six meetings in 2013. There are five members who serve on the CHADRB, representing five different groups in the Community.

Ms. Overman stated that, in 2013, the CHADRB approved 12 applications, while Mr. Van Pelt approved one application filed by LFUCG for Phoenix Park. Over the last 12 years, there have been 67 CHADRB approvals, and 31 by the Design Review Officer. Ms. Overman explained that all of the CHADRB applications are available for review on the website, including the photographs and the Design Review Officer’s staff report. She listed all of the properties that had been reviewed in 2013, and provided photographs and a brief summary of each project.

- B. REQUEST FOR INITIATION OF ZONING ORDINANCE TEXT AMENDMENT** – The staff will request Planning Commission initiation of a Zoning Ordinance text amendment to Article 5-2(a), related to Zoning Compliance Permits.

VII. STAFF ITEMS – No such items were presented.

VIII. AUDIENCE ITEMS – No such items were presented.

IX. MEETING DATES FOR JANUARY, 2014

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	January 9, 2014
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	January 9, 2014
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	January 16, 2014
Planning Commission Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	January 23, 2014
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	January 29, 2014
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	January 30, 2014

X. ADJOURNMENT

TLW/TM/CT/BJR/BS/src

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